

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

| | | |
|---------------------------|---|---|
| BASIL R. MINOTT |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action File No.: 3:16-CV-3 |
| |) | |
| MICHAEL J. MERRILL |) | |
| |) | |
| Defendant. |) | |

NOTICE OF REMOVAL TO FEDERAL COURT

Michael J. Merrill, Defendant in the above-styled action, within the time and in the manner prescribed by law, hereby files this Notice of Removal pursuant to the provisions of 28 U.S.C. § 1441, *et seq.*, and shows the following:

1.

Basil R. Minott filed suit against Merrill in the Superior Court of Morgan County, Georgia, which is within the Athens Division of the United States District Court for the Middle District of Georgia. This action is entitled Basil R. Minott v. Michael J. Merrill, and is known as Civil Action No. SUCA2015000247 in that court.

2.

Plaintiff's Complaint was filed in the Superior Court of Morgan County, Georgia on September 25, 2015. A copy of Plaintiff's Complaint, the Summons, the Case Filing Information Form, the Rule 5.2 Certificate of Service of Discovery, the Return of Service, and Plaintiff's written discovery, including Plaintiff's First Request for Admissions to Defendant,

Plaintiff's First Interrogatories to Defendant, and Plaintiff's First Request for Production of Documents and Notice to Produce to Defendant, are attached hereto as Exhibit 1. Exhibit 1 includes all of the process, pleadings, and orders served on Defendant in the Superior Court action.¹

3.

Defendant Merrill filed his Answer on October 28, 2015, a copy of which is attached as Exhibit 2.

4.

On information and belief, Plaintiff is a domiciliary and citizen of the State of New York.

5.

Defendant is a domiciliary and citizen of the State of South Carolina. Compl. at ¶ 2.

6.

Plaintiff's Complaint alleges that Defendant negligently caused a motor vehicle accident in Morgan County, Georgia, which resulted in injuries to Plaintiff. See generally Compl. at ¶¶ 3-11. Although the Complaint does not seek a sum certain, the Plaintiff alleges therein that he suffered "medical expenses in excess of \$5,985.00." Compl. at ¶ 6. Additionally, the Complaint alleges that "Defendant's conduct was reckless, willful, and/or wanton, and demonstrates a conscious indifference to the consequences of his actions and entitles Plaintiff to an award of punitive damages." Compl. at ¶ 13.

¹ In his Answer and in his discovery responses, Defendant has preserved certain service-related defenses, as Defendant contends he was not served with the Complaint or summons by the Aiken County (S.C.) deputy who purportedly effected service; defense counsel obtained those pleadings directly from the Superior Court Clerk's Office. This matter is of no consequence to this Notice of Removal, and Defendant merely notes here, consistent with his previously-asserted defenses, that he was not "served" with the Complaint and summons, although Defendant is including those documents in Exhibit 1 for the convenience of the Court and the parties.

7.

On November 16, 2015, Defendant served Plaintiff with Defendant's First Request for Admissions. Among other things, Defendant requested Plaintiff to admit that he has not sustained damages in excess of \$75,000.00 in connection with the incident giving rise to this action. See Defendant's First Request for Admissions to Plaintiff, request no. 3. On December 7, 2015, Plaintiff served his Responses to Defendant's First Request for Admissions. Among other denials, Plaintiff denied therein the request asking him to admit that he has not suffered damages in excess of \$75,000.00. See Plaintiff's Response to Defendant's First Request for Admissions, response no. 3. Copies of Defendant's First Request for Admissions to Plaintiff and Plaintiff's Response to Defendant's First Request for Admissions are attached as Exhibit 3.

8.

Given Plaintiff's discovery responses, the amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs, and Defendant consequently may remove the case to this Court.

9.

The United States District Court has original jurisdiction over Plaintiff's claim by virtue of diversity of citizenship and satisfaction of the amount in controversy requirement of 28 U.S.C. § 1332.

10.

At the present time, removal to this Court and Division is appropriate pursuant to 28 U.S.C. §§ 1441(a) and 1446.

11.

This Notice of Removal is timely filed under 28 U.S.C. § 1446(b), having been filed within thirty (30) days of Defendant's receipt of Plaintiff's Responses to Defendant's First Request for Admissions. See 28 U.S.C. § 1446(b)(3) & (c)(3)(A).

12.

Counsel for Defendant Merrill hereby certifies that this Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

13.

Pursuant to statute, a copy of this Notice of Removal will be promptly filed with the Superior Court of Morgan County and served on all parties of interest. Additionally, Defendant will promptly file and serve upon all parties a Notice of Filing of Notice of Removal (attached as Exhibit 4).

WHEREFORE, Defendant prays that this case be removed to the United States District Court for the Middle District of Georgia, Athens Division.

This 6th day of January, 2016.

/s/ Michael N. Loeb
MICHAEL N. LOEBL
Georgia Bar No. 455709
Attorney for Defendant

OF COUNSEL:
Fulcher Hagler LLP
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mloeb1@fulcherlaw.com

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the Notice of Removal to Federal Court by causing same to be placed in the U.S. mail, postage prepaid, to the following attorney(s) of record:

Johnny G. Phillips
Law Office of Johnny Phillips
37 Calumet Parkway, Suite K202
Newnan, Georgia 30263

This the 6th day of January, 2016.

/s/ Michael N. Loeb
MICHAEL N. LOEBL
Georgia Bar No. 455709
Attorney for Defendant

OF COUNSEL:
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